

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Neil R. Foster)	FOIA Control No. 2003-187
)	
On Request for Inspection of Records)	

MEMORANDUM OPINION AND ORDER

Adopted: July 15, 2003

Released: July 31, 2003

By the Commission:

1. This order denies an application for review filed by Neil R. Foster (Foster), seeking review of a decision of the Enforcement Bureau (EB) which denied Foster's Freedom of Information Act (FOIA) request.

2. Foster's FOIA request sought "a copy of the originator of the complaint information leading to FCC Reference Case # EB-2002-393 and Case # EB-2002-437."¹ EB withheld the responsive documents pursuant to FOIA Exemption 7(D), 5 U.S.C. § 552(b)(7)(D), because "production of such records or information could reasonably be expected to disclose the identity of a confidential source," and FOIA Exemption 5, 5 U.S.C. § 552(b)(5), relating to inter-agency and intra-agency memoranda.² Foster timely sought review of the Bureau's decision.³

3. We will deny Foster's application for review. We understand Foster to seek the identity of the complaining party. FOIA Exemption 7(D) permits withholding of "records or information compiled for law enforcement purposes . . . to the extent . . . production . . . could reasonably be expected to disclose the identity of a confidential source"⁴ Here, the source expressly requested confidentiality, and EB granted the source an express assurance of confidentiality. Accordingly, Exemption 7(D) was properly applied to withhold the identity of the source. See United States Department of Justice v. Landano, 508 U.S. 165, 172 (1993) (a source is considered confidential within the meaning of Exemption 7(D) if the source

¹ Letter from Neil R. Foster to Freedom of Information Officer (Jan. 14, 200[3]) (FOIA Control No. 2003-187).

² Letter from Joseph P. Casey, Chief, Technical and Public Safety Division, Enforcement Bureau, to Mr. Neil R. Foster (Mar. 20, 2003).

³ Letter from Neil R. Foster to Office of General Counsel (Apr. 2, 2003). Foster's appeal states in its entirety "Pursuant to the letter from Joseph P. Casey, Chief, Technical and Public Safety Division, Enforcement Bureau, I wish to appeal his denial of my FOIA request, under Section 0.461 of the Commission's rules, 47 C.F.R. Section 0.461."

⁴ 5 U.S.C. § 552(b)(7)(D).

provided information under an express assurance of confidentiality or in circumstances where such an assurance could reasonably be inferred.)

4. Accordingly, IT IS ORDERED that Neil R. Foster's application for review is DENIED. Foster may seek judicial review pursuant to 5 U.S.C. § 552(a)(4)(B).

5. The following officials are responsible for this action: Chairman Powell, Commissioners Abernathy, Copps, Martin, and Adelstein. .

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary